

SESSION OF 2024

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2751

As Amended by House Committee on Health
and Human Services

Brief*

HB 2751, as amended, would permit the Secretary for Aging and Disability Services (Secretary) to waive a requirement of the rules and regulations related to licensing of disability services in certain circumstances, would include a definition for “day service provider” as it relates to criminal history record checks, and would require notice to licensees to include notice of appeals available under the Kansas Administrative Procedure Act and the Kansas Judicial Review Act.

The bill would also make technical amendments.

Waivers of Adopted Rules and Regulations

The bill would allow the Secretary to grant a waiver for disability service provider licenses for a violation of rules and regulations if the waiver is in the public interest and would not detrimentally affect the life, safety, health, or welfare of any person receiving care or treatment in a licensed center, facility, or hospital, or an individual receiving services from a licensed provider.

Criminal History Record Checks

The bill would include that persons who meet the definition of a “day service provider” would need to have a

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

criminal history record check completed and could be disqualified from employment based upon their criminal history record check.

The term “day service provider” would mean:

- A provider of day services for development in self-help, recreational, and work skills to individuals on the Home and Community Based Services (HCBS) Intellectual and Developmental Disability (I/DD) program waiver licensed by the Kansas Department for Aging and Disability Services (KDADS) or separate and distinct division of an organization, the distinct division of which provides day services for development in self-help, recreational, and work skills to individuals on the HCBS I/DD program waiver licensed by KDADS; and
- The provision of pre-vocational services that are aimed at preparing an HCBS I/DD waiver participant for paid or unpaid employment but are not job-task oriented, including teaching concepts related to compliance, attendance, task completion, problem solving, and safety, as provided in 42 CFR § 440.180.

Licensing Failure to Comply

Whenever a failure to comply with requirements, standards, or adopted rules and regulations is found, the bill would permit the licensing agency to make an order denying, conditioning, restricting, suspending, or revoking the disability service provider license after issuing a notice and opportunity for a hearing in accordance with the Kansas Administrative Procedure Act. [Note: Current law requires the licensing agency to issue an order denying, suspending, or revoking the license of a disability service provider when a substantial failure to comply with requirements, standards, or rules and regulations is found.]

The bill would also provide for a person to appeal an order made on a license. "Person" would be defined as any person:

- Who is an applicant for a license or who is the licensee and who has any direct or indirect ownership interest of 25 percent or more in the center, facility, or hospital; or
- Who is the owner, in whole or in part, of any mortgage, deed of trust, note, or other obligation secured, in whole or in part, by the center, facility, or hospital; or
- Who, if the center, facility, hospital, or provider is organized as a corporation, is an officer or director of the corporation, or who, if the facility is organized as a partnership, is a partner.

Notice of Appeal

Current law provides for, if it is found upon reinspection that a licensee has not corrected the deficiency or deficiencies specified in the correction order, the Secretary may assess a civil penalty, and a written notice of

assessment would be served upon the licensee. The bill would require that when a licensee is issued a written notice of assessment, the licensee would be notified of the opportunity to be heard under the Kansas Administrative Procedure Act and that an appeal of an administrative order may be made to the District Court, in accordance with the provisions of the Kansas Judicial Review Act.

Civil Penalty

The bill would require that a licensee has ten days to appeal a civil penalty assessment after receiving written notice of assessment. The licensee would be required to file a written notice of appeal with the Office of Administrative Hearings (OAH) specifying why the civil penalty should not be assessed. However, the filing of a notice of appeal would not stay the payment of a civil penalty. OAH would be required to have a hearing on the notice of appeal. If OAH finds in favor of the appellant licensee and the Secretary affirms the initial order, the civil penalty would be refunded to the appellant licensee. Either party would be permitted to file an appeal on the final order to the District Court in accordance with the Kansas Judicial Review Act.

Background

The bill was introduced in the House Committee on Health and Human Services at the request of Representative Haswood on behalf of KDADS.

House Committee on Health and Human Services

In the House Committee hearing on February 12, 2024, a representative of KDADS provided **proponent** testimony, generally stating that the bill would provide additional remedies regarding licensure. A representative of Goodwill Industries of Kansas testified in support of the bill in general, but expressed concern regarding the criminal history records

check, as Goodwill Industries of Kansas is a second-chance employer.

Written-only proponent testimony was provided by a representative of InterHab.

No other testimony was provided.

The Committee amended the bill to add a definition for “day service provider.”

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Judicial Administration states enactment of the bill could increase the number of cases filed in district courts because it would allow for either party to appeal the final order under the Kansas Judicial Review Act. This, in turn, would increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. Nevertheless, until the courts have had an opportunity to operate under the provisions of the bill, an accurate estimate of the fiscal effect on expenditures by the Judicial Branch cannot be given. The bill would not have a fiscal effect on revenues to the Judicial Branch. However, enactment of the bill could result in the collection of docket fees and civil penalties in those cases filed under the provisions of the bill, which would be deposited in the State General Fund.

According to the State Fire Marshal, KDADS, and OAH, enactment of the bill would have no fiscal effect on the respective agencies. Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor’s Budget Report*.

Kansas Department for Aging and Disability Services; licensing; disability services; day service provider; criminal history record checks; Kansas Administrative Procedure Act